

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,)	CASE NO. 8:04CR316
Plaintiff,)
vs.)
)
RICHARD GARZA,)
)
Defendant.)

This matter is before the Court on the Defendant's motion to reduce his sentence under Amendment 709 (Filing No. 273).

The Defendant pleaded guilty to Counts I and VIII of the Indictment. Count VIII sets out a criminal forfeiture offense, and Count I charged Garza with conspiracy to distribute and possess with intent to distribute 500 grams or more of a mixture or substance containing methamphetamine. Garza was initially sentenced to 168 months, based on a total offense level of 30 and placement in criminal history category VI. (Filing Nos. 168, 169.) However, Garza was resentenced to 151 months based on a motion filed under Federal Rule of Criminal Procedure 35. (Filing No. 238.) Garza's sentence was affirmed on appeal. (Filing No. 269.)

Garza requests a reduced sentence based on changes to § 4A1.2(c) brought about through Amendment 709. Garza argues that Amendment 709 should lower his criminal history category from VI to III. Garza argues that 18 U.S.C. § 3582(c)(2) provides authority for the reduction.

18 U.S.C. § 3582(c)(2) provides that a sentence can be lowered if the sentencing range has been lowered by the Sentencing Commission through the process of revising the sentencing guidelines. Accordingly, U.S.S.G. § 1B1.10 governs the process of

determining which amendments to the guidelines are retroactive. Because Amendment 709 is not included in the list of retroactive amendments set out in U.S.S.G. § 1B1.10(c), Garza's sentence may not be lowered for the reasons raised in his motion. *United States v. Orozco*, 2008 WL 505376, at *1 (D. Kan. Feb. 21, 2008); *United States v. Cutright*, 2008 WL 320515, at *1 (S.D. Ill. Feb. 4, 2008); *United States v. Beasley*, 2007 WL 4390380, at *1 (S.D. Ill. Dec. 14, 2007).

IT IS ORDERED that the Defendant's motion to reduce his sentence under Amendment 709 (Filing No. 273) is denied.

DATED this 7th day of March, 2008.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge